IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 887 OF 2007

Tulsidas Goyal ..Petitioner

Vs.

State of Maharashtra and anr. ..Respondents

WITH
CRIMINAL WRIT PETITION NO. 888 OF 2007

Tulsidas Goyal ..Petitioner

Vs.

State of Maharashtra and anr. ..Respondents

Ms. Sunita Sharma i/by Mr.S.P. Narkar for petitioner.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 25, 2007.

P.C.:

1. Both these petitions raise a common challenge to an order passed by the learned Metropolitan Magistrate rejecting an application purportedly filed under Section 145 (2) of the Negotiable Instruments

Act, 1881. The petitioner-accused had prayed in the said application submitted before the learned Metropolitan Magistrate in the complaint filed under Section 138 of the N.I. Act, 1881 to direct the complainant to enter the witness box and depose on the truthfulness of the statements made in the affidavit filed by him as and in terms of his examination-in-chief.

2. The very same controversy has already been decided by this court in a common order dated 23/8/2007 passed in Criminal Writ Petition Nos.1558 to 1560 of 2007 and the same reasoning is applicable to these two petitions as well. Both the petitions have been filed by the very same accused.

3. For the sake of repetition, I may state that the affidavit filed by way of examination-in-chief cannot be treated so, unless the affiant steps in the witness box, verifies on oath the statements made in the affidavit to be correct as per his knowledge and information and he is allowed to be cross-examined by the accused on the said affidavit. Merely exhibiting

such an affidavit without such verification cannot be treated to be the examination-in-chief of the affiant.

4. For the reasons set out in the common order dated 23/8/2007 passed in Criminal Writ Petition Nos.1558 to 1560 of 2007 and in terms of the said clarifications, the petitions are disposed off.

(B.H. Marlapalle,J.)